Millard Processing Services, Inc. *and* UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union. Cases 17–CA–15133, 17–CA–15375, and 17–CA–15843

February 11, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On October 9, 1992, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Millard Processing Services, Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent's exceptions merely assert that the Board erred in certifying the Union, a matter that has been fully considered previously. See 304 NLRB 770 (1991), and 308 NLRB 929 (1992).

For the reasons stated in his dissent in the underlying representation case (304 NLRB 770), Member Raudabaugh believes that the Union was not properly certified. Accordingly, he would dismiss the 8(a)(5) allegations.

Constance N. Traylor, Esq., for the General Counsel.
Patrick J. Barrett, Esq. (McGrath, North, Mullin & Kratz, P.C.), of Omaha, Nebraska, for the Respondent.
Thomas F. Dowd, Esq. (Thomas F. Dowd & Associates), of Omaha, Nebraska, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. These cases were tried in Omaha, Nebraska, on February 27 and 28, and April 8, 1992. On an amended charge filed in Case 17–CA–15133 on September 13, 1990, by the Union, UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union, and a further charge in Case 17–CA–15375 on January 2, 1991,[1] by the Union, the Regional Director for Region 17 issued an order consolidating cases, consolidated complaint and notice of hearing, on September 24, against Millard Processing Services, Inc. (Millard). Thereafter, on the Union's further charges in Cases 17–CA–15843 and 17–CA–15923, filed, respectively, on October 8 and November 27, an amended charge in Case 17–CA–15843, filed on November 27, and the previous charges filed in Cases 17–CA–15133 and 17–CA–5375, the Regional Director, on December 10, issued his order further consolidating cases consolidated complaint and notice of hearing. At the hearing, on February 27, 1992, on the Union's motion, I severed Case 17–CA–15923 to expedite resolution of the issues regarding the Union's certification which had been raised in that case.

The consolidated complaint, to the extent pertinent to Cases 17–CA–15133, 17–CA–15375, and 17–CA–15843, and as amended at the hearing, alleged that Millard had violated Section 8(a)(1) of the National Labor Relations Act (29 U.S.C. § 151 et seq.), by interrogating employees regarding their union membership, activities, and sympathies, asking employees to advise fellow employees to withhold support from the Union, and threatening employees with the closing of Millard's plant if the employees selected the Union as their collective-bargaining representative. The consolidated complaint in these cases also alleged that Millard violated Section 8(a)(5) and (1) of the Act by unilaterally changing its employees' wages, hours, and other terms and conditions of employment. In its timely answer to the consolidated complaint issued on December 10, Millard denied these allegations.

On the entire record before me in this proceeding, including the briefs filed by the General Counsel and Millard, I make the following

FINDINGS OF FACT

I. JURISDICTION

Millard, a corporation engaged in the processing and slicing of bacon, has an office and place of business in Omaha, Nebraska, where, in the course of its business, it annually purchases and receives products, goods, and materials valued in excess of $50,000 directly from points outside the State of Nebraska. Millard admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Millard also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Interference, Restraint, and Coercion*

In May 1990, employee Tonda Bruckner encountered Supervisor Scott Procopio, after work, at a bar and grill located a few blocks from Millard's plant. In the course of conversation with Bruckner, Supervisor Procopio asserted that if the Union ''came in,'' Larry Larsen, Millard's owner, would close the plant.[2] At the time of this incident, the subject of

[1] All dates are in 1991, unless otherwise indicated.

[2] Procopio denied telling Bruckner that Larry Larsen would close the plant if the Union came in. However, he could not remember having any conversation with Bruckner at the bar and grill, or of even seeing her there at any time. On cross-examination, Procopio seemed reluctant to admit that he had occasionally talked to Tonda Bruckner at Millard's plant. In contrast, Bruckner seemed to be giving her best recollection of a conversation she had with Procopio. *Continued*

union representation was a matter of importance among Millard's employees. Indeed, this conversation occurred only a few weeks before the Board conducted a representation election in Case 17–RC–10493, among Millard's plant employees. I find that Procopio's message amounted to a threat of economic reprisal aimed at discouraging employees from voting for the Union. I also find that by this threat, Millard violated Section 8(a)(1) of the Act.

In mid-July 1990, in the breakroom at Millard's plant, Supervisor Jon Barber, in the presence of employee Joe Sanchez, asked employee Alex Ybanez what he thought about the union. Ybanez' initial response was: ''It has its ups and downs.'' He then told of how he had at one time decided to join a union at another plant, but that the employer closed it down. Supervisor Barber remarked: ''See where the union left you. You don't need a union.'' Barber continued: ''You should talk to other people about not joining the union for the simple reason that we have the same benefits.'' Barber's tone caused Ybanez to sense that he was being ordered to go through the plant, urging employees against joining the Union.[3]

Barber's questioning of Ybanez' union sentiment was not accompanied by any assurance against reprisal if the answer revealed a prounion attitude. Also, Barber followed up his question by soliciting Ybanez to advise other employees to reject the Union. By thus pressuring Ybanez to speak out against the Union, Millard violated Section 8(a)(1) of the Act. *PYA/Monarch, Inc*., 275 NLRB 1194, 1202 (1975). I also find that in these circumstances, Barber's interrogation of Ybanez was coercive and therefore violated Section 8(a)(1) of the Act.

B. *Unilateral Changes*

1. The facts

a. *Background*

Millard admits, and I find, that the following unit of its approximately 400 employees is appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time maintenance, production, and sanitation employees employed by Millard, at its facility located at 13076 Renfro Circle, Omaha, Nebraska, but excluding all office clerical employees, guards, foremen and supervisors as defined in the Act, and all other employees.

On June 29, 1990, a majority of Millard's employees, in the unit described above, designated and selected the Union as their representative for collective-bargaining purposes, in a secret ballot election which the Board conducted in Case 17–RC–10493. Thereafter, Millard filed objections to the election. On August 27, the Board certified the Union as the exclusive representative of the employees in the unit described above, for the purpose of collective bargaining with Millard.

By its letter dated September 6, the Union requested that Millard recognize, and bargain with, the Union as the exclusive collective-bargaining representative of the unit described above. In my decision in *Millard Processing Services*, in Case 17–CA–15923 (July 21, 1992), I found that:

> Millard has since about September 6, refused to bargain collectively with the Union, as the exclusive representative of the employees in the appropriate unit, and that by such refusal, Millard has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

b. *The alleged changes*[4]

Prior to July 28, 1990, Millard assigned its slicing department employees to two Saturday shifts. The first shift worked from 7 a.m. until 3:30 p.m. The second shift's Saturday hours were, generally, from 4 p.m. until midnight. However, the second shift ended at various times, up to 1 a.m.

Millard's curing department also worked in two shifts on Saturdays prior to July 28, 1990. The curing employees' first shift started in the morning, at a variety of times. However, 7:30 a.m. predominated. On most Saturdays, before July 28, 1990, this shift ended at 4 p.m. In 1990, before July 28, the second curing shift, for the most part, started at 4:30 p.m. and ended at times varying from 9:30 p.m. to 1:30 a.m.

On July 28, 1990, and thereafter, Millard extended the first shift on Saturdays, in both the slicing and curing departments, by 2 hours, from 7 a.m. to 5:30 p.m. Also, on and after that date, Millard changed the second shift on Saturdays, for both departments. The new hours were 5:30 p.m. to 2 p.m. Millard made both changes without either notifying, or bargaining with, the Union.

From 1988 until September 1990, Millard provided its bargaining unit employees with an optional group health insurance program administered by New York Life Insurance Company. Approximately 35 to 40 percent of the unit employees participated in this program. Millard and the participating unit employees, each, paid 50 percent of the premiums. The policy was renewable, annually, on October 1. In August 1990, New York Life announced substantial in-

---

Her sincere manner persuaded me that she was the more reliable witness. Accordingly, I have credited her account of Procopio's remarks.

[3] On direct examination, Supervisor Barber testified that he did not know either Ybanez or Sanchez and that he could not recall any conversation he might have had with Ybanez. Further, on direct examination, Barber denied questioning Ybanez or Sanchez about their thoughts regarding the Union. Barber also denied telling Ybanez to advise other employees against joining the Union.

The certainty with which Barber had testified on direct examination contrasted with his inability on cross-examination to recall any details of the several conversations he admitted having with employees regarding the Union, during the preelection period. Barber did not provide any recollection of the content of any these conversations. When counsel pressed him for some details of his conversations, he seemed annoyed as he answered, ''I don't have actual physical data on that, no.'' My effort to extract some information from him regarding these conversations also failed. Barber did not exercise his recollection, except to admit that he had ''several conversations with some employees out there.''

In contrast with Barber, Ybanez seemed to be giving his best recollection of his encounter with Supervisor Barber in mid-July 1990. As Ybanez impressed me as the more conscientious witness, I have credited his testimony, and have rejected Barber's denials.

[4] Except as reflected in fn. 8 below, the essential facts regarding the alleged unilateral changes are not in dispute.

creases in the premium rates for Millard's group health program. Millard decided to change this program.

In mid-September 1990, without notifying or attempting to bargain collectively with the Union, Millard, unilaterally, decided to provide its bargaining unit employees with a self-funded group health insurance program, which Blue Cross and Blue Shield of Nebraska would administer. Millard and the participating employees would each pay 50 percent of the premiums. Although lower than those required under the proposed New York Life rate schedule, the premiums required under the Blue Cross-Blue Shield administered program were somewhat higher than those paid under the previous New York Life policy. The employees' weekly health insurance premium payroll deductions for a single person rose from $8.01 to $10.33. For family coverage, the weekly premium payroll deductions went from $24.85 to $28.41.

From October 1, 1990, up to and including October 31, 1990, Millard paid the increases for the employees. Commencing November 1, 1990, the bargaining unit employees paid the increased premiums.

On November 1, 1990, Millard adopted an option permitting employees to pay their health insurance premiums out of pretax dollars, thus lowering their reportable gross income, and, in some instances, slightly increasing take-home pay. Millard's printed announcement of the new health insurance program, which it issued to its employees, showed, for example, that an employee receiving a specified amount of wages per week, with single coverage, would take home an additional 31 cents per week, while another employee, with family coverage, would go home with 92 cents less per week.

The Blue Cross-Blue Shield plan included a preferred provider organization (PPO) program, designed to reduce the cost of providing health care. If an employee chose a physician or hospital on the Blue Cross-Blue Shield preferred provider list, the insurance plan would pay 85 percent of the coinsurance amount after the employee paid the deductible. The employee's total out-of-pocket expenses for covered service would be limited to $950 per person and $1900 per family membership.

If an employee covered by the new health insurance program chose a physician or hospital not on the PPO list, his or her out-of-pocket expenses would increase. The program would pay only 70 percent of the coinsurance amount after the employee had paid the deductible. The employee's total out-of-pocket expenses would be lmited to $2450 per person and $4900 per family.

The expired New York Life Insurance Company health insurance policy covering Millard's bargaining unit employees did not have a PPO plan. Coverage was not governed by the choice of a specific physician or hospital. The New York Life program limited out-of-pocket expenses to $1200 per person and $2400 per family.

Later, in April, Millard, without notice to the Union, and without seeking to bargain collectively with the Union, changed the carrier for the life insurance policy which it was providing for its bargaining unit employees. The former carrier was Standard Insurance of Oregon. The new carrier was Phoenix Mutual Life Insurance Company. Both insurance policies provided coverage amounting to three times the insured employee's annual salary. There was no change in the terms or conditions of the coverage.[5]

In November 1990, Millard reassigned 11 bargaining unit employees, who were classified as defrosters, to other work. Millard transferred 9 of the 11, temporarily, to other duties on November 12, 1990, and the remaining 2, respectively, on November 8 and 14, 1990. Seven of these same employees received lower wage rates in their new job assignments.[6] Millard made these changes in response to the depletion of its supply of frozen pork bellies, which it uses to produce bacon. Millard reassigned the employees and reduced the wage rates of seven of them, without any notice to the Union, and without giving the Union any opportunity to bargain collectively on behalf of the unit employees.

Since Millard began operations, on June 27, 1988, it has experienced two temporary lapses in the flow of frozen pork bellies to its plant. The first of the lapses involved an insufficient flow of frozen pork bellies to Millard in the fall of 1989. At that time, the shortage was not so severe as to cause Millard to dispense with its defrosting activity completely. Millard retained sufficent numbers of defrost employees to process the fluctuating flow of frozen pork bellies. As the flow diminished, Millard reduced the number of defrost employees in the work force. When the flow increased, Millard recalled defrost employees as needed. Millard did not change the defrost employees' hourly wage rates during the 1989 shortage.

The second lapse occurred in November 1990. At that time, Millard had virtually depleted its frozen pork bellies. The record shows that in contrast with October 1989, when there were 32 million pounds of frozen pork bellies available to Millard, in October 1990, only 4.8 million pounds were available. Millard processes 400,000 pounds of pork bellies per day. In the face of this temporary depletion, Millard offered in-plant transfers to the 11 defroster employees. The 11 accepted the temporary transfers and the wage rates applicable to their new job classifications. Six to 8 weeks before Millard transferred the defroster employees to other classifications, it had made the decision to do so, after noting from market reports that frozen pork belly inventories were dwindling.

Rayford Palmer, who was a Millard employee from September 1989 until December 1990, was classified as a defroster for the duration of that period. However, Millard frequently assigned him, temporarily, to slicing, curing, or to the smoke house, but continued to pay him at the defroster

[5] At the hearing before me, counsel for the General Counsel, inadvertently amended par. 7(b) of the consolidated complaint to allege, inter alia, that ''[o]n or about November 1, 1990,'' Millard ''changed from a life insurance plan administered by New York Life Insurance Company to another life insurance plan.'' However, the exhibits received in evidence and the expert testimony of Millard's witness, Mark Hudak, showed beyond doubt that Standard Insurance of Oregon, rather than New York Life Insurance Company, was the life insurance plan carrier prior to the change in April.

[6] Millard reduced the wages of the following defrosters, as shown:
Maurice Armstrong from $6.60 to $ 6.10/hr.
Leroy Thompson from $6.30 to $5.80/hr.
Angel Arreola from $6.00 to $5.75/hr.
Lawrence Hart from $6.00 to $5.50/hr.
Shawn Pierce from $6.00 to $5.75/hr.
Rayford Palmer from $6.55 to $6.05/hr.
Brian Hardy from $6.25 to $5.75/hr.

classification's hourly rate, except on this occasion in November 1990.[7]

I also find from the testimony of Operations Manager Woodward, that, depending on production needs, Millard, as a matter of practice, both before and since the Board-conducted election on June 29, 1990, has moved bargaining unit employees, temporarily, from one classification of work to another, at will. However, neither Woodward nor any other witness testified that defroster employees, who were transferred temporarily to other work in 1989, suffered a wage rate cut as a result of the transfer.

Millard's personnel records, received in evidence, show employees receiving long-term reclassifications accompanied by wage increases, or no change in wages. There was no showing of wage reductions. However, these records did not reflect the temporary job changes disclosed in Palmer's and Woodward's credited testimony.

In 1989, Millard undertook an incentive plan to encourage employees to work on Sundays. At first, Millard offered a bonus for Sunday work. After a short trial period, Millard dropped the bonus and went to a double time payment for Sunday work. On November 1, 1989, Millard abandoned the double time incentive and went to the time-and-a-half rate after 40 hours in any work week.[8] Millard achieved its Sunday-work objective in early June, almost 1 year after the Union had won the representation election at its plant.

On June 2, Millard posted notices to its plant employees, announcing:

> Starting 6.2.91 until further notice work will be scheduled 7 days a week
>
> See the days off schedule for your days off.

Millard immediately began scheduling 7-day workweeks. Millard also required employees to work 6 consecutive days and then take 2 days off. Employees on this new schedule would have different days off each week, and would work on Sundays, on a rotating basis. Millard did not give any notice or warning of this new work schedule to the Union. Nor did Millard offer to bargain with the Union about this change.

On May 7, 1990, Millard began providing free bus service for its second-shift employees, to and from work, on a 6-week trial basis. Millard contracted with the Mayflower Bus Company to establish a bus route between the plant, located in southwest Omaha, and points in south Omaha, which included an area due south of downtown Omaha. Mayflower was to pick up the second-shift employees at specified pick-up points and return them to those points at night, after the second shift ended.

On the conclusion of the trial period, Millard and Mayflower set up a southern route and a northern route to serve the second-shift employees. The southern route operated between the plant and points in south Omaha. The northern route operated between the plant and points in north Omaha. Mayflower had authority to adjust the routes for the convenience of the employees. The bus company could, and did, routinely, change stop locations from one street to another, or from one corner to another. Mayflower was free to make such changes, as long as it kept Millard informed of them. Millard's primary concerns were punctuality and the amount of time employees spent on the bus, enroute.

Mayflower changed the schedules and its stops for the employees' convenience. From time to time, employees would tell the bus drivers that they would be better served if the bus stopped at the next corner. Millard received word of the changes from Mayflower, and included such information in the revised bus schedules, which it gave to new hires.

On September 18, Millard posted the following notice at the plant:

> BUS RIDERS NOTICE
>
> The schedule for the M.P.S. bus will be changed effective *Monday, September 23, 1991*.
>
> There will only be *one* bus, but it will cover most of the same route that is now covered by two.

Attached to the notice was a new schedule, to be effective on September 23. This new schedule reflected changes in times, a single route, and a reduction in the number of stops. Millard neglected to notify the Union of these changes, or of the decision to make them. Nor did Millard offer to bargain with the Union about them.[9]

I find from Operations Manager Woodward's testimony and Millard's notice to employees, dated October 7, that prior to that date, Millard did not require payment of any fee when an employee requested replacement of a lost paycheck. Such incidents had arisen with sufficient frequency as to cause concern to Millard. In its notice, dated October 7, Millard announced that, effective that day, it would charge $15 for issuance of a replacement check, and would deduct that amount from the new check. Millard did not give notice of this policy change to the Union. Nor has Millard offered to bargain collectively with the Union about it.

2. Analysis and conclusions

The General Counsel contends that Millard violated Section 8(a)(5) and (1) of the Act, when it made each of the changes recited above, without affording the Union notice of

[7] Millard argues in its brief that Rayford Palmer's testimony was ''patently incredible'' (Millard's Br. at 15, fn. 2.) However, Millard's brief did not substantiate this assertion. Palmer testified in a frank and forthright manner, and seemed sincere in his efforts to respond to questions. I also noted that his testimony that his hourly wage remained the same when he was temporarily transferred from his defroster work to other classifications was uncontradicted.

[8] At the hearing, on April 8, 1992, Millard's manager of human resources, Harold Edrington, testified about Millard's unsuccessful efforts to encourage its slicing and curing employees to work on Sundays. In support of his testimony, Millard offered into evidence a notice to employees, dated November 1, 1989, announcing the abandonment of the bonus and double time incentives for Sunday work. I rejected the offer on the ground of relevance, as urged by counsel for the General Counsel. However, counsel for the General Counsel permitted Edrington to testify about these same incentives, without objecting. As the proffered exhibit corroborated Edrington's testimony regarding the circumstances leading up the alleged unilateral adoption, in June, of a 7-day work schedule, including Sunday, I have decided to reverse my ruling. Therefore, I now receive the notice in evidence as R. Exh. 26.

[9] I based my findings of fact regarding Millard's bus service on the testimony of its Operations Manager William R. Woodward and its Human Resources Manager Harold Edrington, and on pertinent exhibits.

the contemplated change, and an opportunity to bargain collectively on behalf of the bargaining unit. Millard argues that, assuming that the Board had properly certified the Union as the collective-bargaining representative of its plant employees, these changes were not substantial enough to entitle the Union to bargain about them. Therefore, according to Millard, its unilateral actions did not violate the Act. I find merit in the General Counsel's position.

Section 8(d) of the Act, which defines the duty to bargain collectively imposed by Section 8(a)(5) of the Act, requires an employer to ''meet . . . and confer in good faith [with his employees' majority representative] with respect to wages, hours and other terms and conditions of employment.'' *NLRB v. Katz*, 369 U.S. 736, 742–743 (1962). Items falling within the language of Section 8(d) are mandatory subjects of bargaining. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). Accordingly, an employer is prohibited from changing matters related to wages, hours, or terms and conditions of employment without first affording the employees' bargaining representative a reasonable and meaningful opportunity to discuss the proposed alterations. *NLRB v. Katz*, supra, 369 U.S. at 743.

Where, as here, a labor organization had won a majority in a Board-held election, and the resolution of objections to the election resulted in the union's certification, the Board, in *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975), provided the following guidance regarding an employer's duty to comply with Section 8(d) of the Act in such circumstances:

> [A]bsent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not been made. And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a)(5) and (1) for having made such unilateral changes. Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued.

The Board has also held that ''in order for a statutory bargaining obligation to arise with respect to a particular change unilaterally implemented by an employer, such change must be a 'material, substantial, and a significant' one affecting the terms and conditions of employment of bargaining unit employees. [Citations omitted.]'' *Angelica Healthcare Services Group*, 284 NLRB 844, 853 (1987). I find that Millard has made material, substantial, and significant changes in the wages, hours, and conditions of employment, as alleged by the General Counsel. Thus, I find that the changes in Saturday shift schedules, the changes in health and life insurance carriers,[10] the increases in health insurance premiums, the decreases in wage rates for the defrost employees in November 1990, the imposition of a 7-day work schedule, including Sundays, and the requirement that employees work 6 consecutive days and then take 2 days off, the reduction in bus transportation, and the imposition of a $15 fee for replacement of lost checks satisfied the Board's test.

I also find that Millard has failed to show that ''compelling economic considerations'' required it to make any of these changes without giving the Union notice and without affording the Union an opportunity to bargain about each of them. By failing to notify the Union and provide it with an opportunity to bargain while its objections to the election were pending, Millard acted at its peril. As the Board certified the Union on August 27, I find that by implementing the changes recited above, without prior notice to the Union and without affording the Union an opportunity to bargain, Millard violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Millard Processing Services, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. By questioning employee Alex Ybanez regarding his union sentiment, threatening employees with plant closure if the Union succeeded in organizing its employees, and by soliciting employee Alex Ybanez to discourage employees from supporting the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. At all times since June 29, 1990, the Union has been, and continues to be, the exclusive representative of Respondent's employees in the following bargaining unit found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time maintenance, production, and sanitation employees employed by Respondent, at its facility located at 13076 Renfro Circle, Omaha, Nebraska, but excluding all office clerical employees, guards, foremen and supervisors as defined in the Act, and all other employees.

5. By unilaterally changing the wages, hours, and other terms and conditions of employment of its bargaining unit employees by changing the Saturday shift schedules for both first and second shift employees, changing from a group, health insurance program provided and administered by New York Life Insurance Company, to a plan funded by Respondent and adminstered by Blue Cross-Blue Shield of Nebraska, changing the amount of health insurance premiums paid by the unit employees, changing the life insurance carrier for its bargaining unit employees from Standard Insurance of Oregon to Phoenix Mutual Life Insurance Company, placing the workweek for bargaining unit employees on a 7-day basis, including Sunday, and requiring them to work 6 con-

[10] Millard contends that the amendment of the complaint at the hearing to include an allegation that its unilateral change of the insurance carrier for the employees' life insurance was barred by the 6-month limitation period prescribed by Sec. 10(b) of the Act. I find, however, that this allegation is closely related to the other allegations of unilateral changes in the underlying charges, and thus was not barred by Sec. 10(b) of the Act. *Long Island Day Care Services*, 303 NLRB 112 (1991).

secutive days followed by 2 days off, reducing the bus service provided to bargaining unit employees by eliminating one of two routes, reducing the number of stops, and using one bus instead of two, and by charging employees $15 for replacing lost paychecks, Respondent has violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unilaterally changed the Saturday shift schedules for the first and second shifts, and that Respondent has unilaterally changed to a 7-day work schedule, requiring employees to work 6 consecutive days and take the next 2 days off, I shall order that Respondent restore the Saturday shift, the weekly work schedules, and the bargaining unit employees' individual work schedules to the status quo ante by revoking the unilateral changes it made in those schedules, and restoring the previous schedules. Having found that Respondent unilaterally changed the carriers of its employees' health and life insurance, and that Respondent also increased the health insurance premiums paid by its employees, I shall order that Respondent, at the Union's request, rescind those changes, and reimburse those employees who were required to pay increased premiums, deductible medical expenses or other out-of-pocket expenses under those changes. Having found that Respondent unilaterally reduced the wage rates of defrost employees Armstrong, Thompson, Arreola, Hart, Pierce, Palmer, and Hardy, I shall order Respondent to restore their respective wage rates to what they were prior to these unilateral reductions and make them whole for any loss of earnings suffered because of this unlawful conduct. Having found that Respondent unilaterally changed its bus service by reducing the routes from two to one, eliminating stops, and decreasing the number of buses from two to one, I shall order that Respondent restore the status quo ante by revoking these changes and restoring the bus service by reinstating the two routes and their designated stops, and by using two buses to perform this transportation service. Having found that Respondent has unilaterally changed its policy regarding the loss of paychecks by requiring bargaining unit employees to pay to Respondent $15 to replace each lost paycheck, I shall order that Respondent revoke this policy, restore its former policy of replacing paychecks without charge, and reimburse those employees who have paid the unlawful fee. Backpay for lost earnings resulting from Respondent's unilateral changes shall be computed as described in *Ogle Protection Service*, 183 NLRB 682, 683 (1970). Interest for backpay and reimbursements shall be computed as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

[11] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Millard Processing Services, Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that if they selected the Union, UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union, or any other labor organization to represent them for purposes of collective bargaining, Respondent would close its plant.

(b) Interrogating employees regarding their attitude toward the Union or any other labor organization.

(c) Asking employees to advise other employees to reject the Union or any other labor organization.

(d) Refusing to bargain in good faith with the Union as the exclusive representative of its employees with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, in an appropriate unit consisting of:

> All full-time and regular part-time maintenance, production, and sanitation employees employed by Millard, at its facility located at 13076 Renfro Circle, Omaha, Nebraska, but excluding all office clerical employees, guards, foremen and supervisors as defined in the Act, and all other employees.

(e) Making unilateral changes in the hours of employment, the health insurance program, the life insurance program, the wage rates, the work schedules, the policy of replacing lost paychecks without charge, the bus transportation furnished by the Respondent, or in other terms or conditions of employment covering bargaining unit employees, without prior notice to or bargaining with the Union as the exclusive representative of the bargaining unit described above.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify and give the Union an opportunity to bargain about any changes in the unit employees' terms and conditions of employment, including the changes in the Saturday hours of the first and second shifts, the change from a New York Life Insurance Company group health policy to a self-insured plan administered by Blue Cross-Blue Shield of Nebraska, the increase in the amounts of premiums for health insurance paid by employees, the change in life insurance coverage from Standard Insurance of Oregon to Phoenix Mutual Life Insurance Company, the reduction in the wage rates of defrost employees Maurice Armstrong, Leroy Thompson, Angel Arreola, Lawrence Hart, Shawn Pierce, Rayford Palmer, and Brian Hardy, the imposition of a 7-day workweek for the bargaining unit employees, including Sunday, the requirement that they work 6 consecutive days followed by 2 days off, the reduction of the M.P.S. bus service provided to bargaining unit employees by elimination of one of two routes, reduction in the number of stops, and the use of one bus instead of two, and the imposition of a $15 charge on employees for the replacement of a lost paycheck.

(b) On the Union's request, rescind the changes in Saturday shift hours for the first and second shifts, which were effective on July 28, 1990.

(c) On the Union's request, terminate the self-insured health program administered by Blue Cross and Blue Shield of Nebraska, reinstate the New York Life Insurance Company's group health program, and rescind the increases in the premiums paid by employees, which became effective on October 1, 1990.

(d) Reimburse employees for the increases in premiums which they were required to pay on and after November 1, 1990, as a result of the unilateral changes in the group health insurance program, with interest.

(e) On the Union's request, terminate the Phoenix Mutual Life Insurance Company life insurance program and reinstate the Standard Insurance of Oregon life insurance policy.

(f) Rescind the wage reductions imposed on defrost employees Maurice Armstrong, Leroy Thompson, Angel Arreola, Lawrence Hart, Shawn Pierce, Rayford Palmer, and Brian Hardy in November 1990, and make them whole for any losses of earnings suffered as a result of these reductions, with interest, in the manner set forth in the remedy section.

(g) On the Union's request, revoke the 7-day work schedule and the requirement that bargaining unit employees work 6 consecutive days, with 2 days off, and restore the workweek and the work schedule, which were in effect on June 1.

(h) On the Union's request, revoke the changes in the M.P.S. bus service, which went into effect on September 23, including the use of one bus instead of the two, the reduction in routes from two to one, and the reduction in the number of stops, and resume the bus service with two buses, and the same routes and stops as were served prior to the revoked changes.

(i) Rescind the policy announced on October 7, which requires bargaining unit employees to pay $15 for replacement of each lost paycheck, and reimburse bargaining unit employees for all such payments they may have made as a result of this unilateral change in policy, plus interest.

(j) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(k) Post at its facility in Omaha, Nebraska, copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(l) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell our employees that if they select the Union, UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union, or any other labor organization to represent them for purposes of collective bargaining, that we will close our plant.

WE WILL NOT coercively interrogate our employees about their attitude toward the Union or any other labor organization.

WE WILL NOT ask our employees to advise other employees to reject the Union or any other labor organization.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive representative of our employees with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, in an appropriate unit consisting of:

> All full-time and regular part-time maintenance, production, and sanitation employees employed by Millard, at its facility located at 13076 Renfro Circle, Omaha, Nebraska, but excluding all office clerical employees, guards, foremen and supervisors as defined in the Act, and all other employees.

WE WILL NOT make unilateral changes in the hours of employment, the health insurance program, the life insurance program, the wage rates, the work schedules, the bus transportation furnished by us, our policy regarding replacement of lost paychecks, or in other terms or conditions of employment covering our bargaining unit employees, without prior notice to or bargaining with the Union as the exclusive representative of the bargaining unit described above.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL notify and give the Union an opportunity to bargain about any changes in the unit employees' terms and conditions of employment, including the changes in the Saturday hours of the first and second shifts, the change from a New York Life Insurance Company group health policy to

a self-insured plan administered by Blue Cross-Blue Shield of Nebraska, the increase in the amounts of premiums for health insurance paid by employees, the change in life insurance coverage from Standard Insurance of Oregon to Phoenix Mutual Life Insurance Company, the reduction in the wage rates of defrost employees Maurice Armstrong, Leroy Thompson, Angel Arreola, Lawrence Hart, Shawn Pierce, Rayford Palmer, and Brian Hardy, the imposition of a 7-day workweek for the bargaining unit employees, including Sunday, the requirement that they work 6 consecutive days followed by 2 days off, the reduction of the bus service provided to bargaining unit employees by elimination of one of two routes, reduction in the number of stops, and the use of one bus instead of two, and the imposition of a $15 charge on bargaining unit employees requesting issuance of a check to replace a lost paycheck.

WE WILL, on the Union's request, rescind the changes in Saturday shift hours for the first and second shifts, which were effective on July 28, 1990.

WE WILL, on the Union's request, terminate the self-insured health program administered by Blue Cross and Blue Shield of Nebraska, reinstate the New York Life Insurance Company's group health program, and rescind the increases in the premiums paid by our bargaining unit employees, which became effective on October 1, 1990.

WE WILL reimburse our bargaining unit employees for the increases in premiums which they were required to pay on and after November 1, 1990, as a result of the unilateral changes in the group health insurance program, with interest.

WE WILL, on the Union's request, terminate the Phoenix Mutual Life Insurance Company life insurance program, for our bargaining unit employees, and reinstate the Standard Insurance of Oregon life insurance policy for them.

WE WILL rescind the wage reductions imposed on defrost employees Maurice Armstrong, Leroy Thompson, Angel Arreola, Lawrence Hart, Shawn Pierce, Rayford Palmer, and Brian Hardy in November 1990, and make them whole for any losses of earnings suffered as a result of these reductions, with interest.

WE WILL, on the Union's request, revoke the 7-day work schedule and the requirement that bargaining unit employees work 6 consecutive days, with 2 days off, and restore the workweek and the work schedule which were in effect on June 1, 1991.

WE WILL, on the Union's request, revoke the changes in the M.P.S. bus service, which went into effect on September 23, 1991, including the use of one bus instead of the two, the reduction in routes from two to one, and the reduction in the number of stops, and resume the bus service with two buses, and the same routes and stops as were served prior to September 23, 1991.

WE WILL rescind the policy announced on October 7, 1991, which requires bargaining unit employees to pay $15 for the replacement of lost paychecks, and reimburse bargaining unit employees for all such payments they may have made as a result of this unilateral change in policy, plus interest.

MILLARD PROCESSING SERVICES, INC.